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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.240 OF 2007

Scooters India Ltd. and another Applicants
versus
Smt.Indirabai Vasudeo Gorwadkar Respondent
since dead through LRs.

Mr.P.N.Joshi for applicants.
Mr.C.R.Dalvi with M.M.Sathaye for respondent.

CORAM : A.S.OKA, J.
DATE : 25th June 2007

PC :

1. The submissions of the learned counsel appearing for the parties were heard on the last date. The order was not passed as the learned counsel for the applicants sought time to take instructions.

2. By this Civil Revision Application the applicants who are the original defendants have taken an exception to the decree of eviction passed by the Trial Court which has been confirmed in appeal by the District Court. The first applicant is the first defendant and the second applicant is the second defendant in the suit filed by the respondents-original

defendants. The suit relates to the property which is more particularly described in paragraph no.1 of the plaint. The suit property includes constructed area of 80 square metre along with the open space around the constructed area. The suit property was let out in the year 1974 in favour of first applicant by an agreement dated 23rd November 1974 executed by the predecessor-in-title of the respondents. The suit filed by the respondents for eviction is on various grounds. It is alleged that the first applicant has changed the user of the suit property. It is also alleged that the first applicant has made permanent construction in the suit property without the consent of the respondents. It is also alleged that the first applicant has sublet the suit property to the second applicant without the consent of respondents. The last ground is of arrears of rent. The Trial Court negatived the ground of arrears of rent and upheld the ground of the change of user, permanent construction and unauthorised subletting. The Appellate Court also recorded a finding that the first applicant surrendered the tenancy and the first respondent (Late Smt.Meerabai) had contracted to let out the suit property to one Mr.Nitin Joshi. The

Appellate Court upheld all the grounds of eviction including the arrears of rent.

3. Insofar as ground of subletting is concerned, the allegation made in the plaint is that the first applicant has sub-let the suit property to the second applicant during pendency of the suit. The allegation of change of user made in the plaint is based on the terms and conditions of the tenancy of the first applicant. The first applicant was inducted in the suit property for the purposes of running a retail outlet of sale and service of scooters, two wheelers and three wheelers and other products and spare parts manufactured and/or marketed by first applicant. The allegation in the plaint is that the second applicant is selling the scooters manufactured by M/s.Kinetic Engineering Limited as well as VIDEOCON make Television sets in the suit property.

4. Mr.Joshi appearing for the petitioners has taken me through the impugned judgments and orders. He submitted that the findings recorded by the Courts below on the issue of arrears and permanent construction are perverse. He submitted that the finding of the Trial Court

that the second applicant is selling scooters manufactured by M/s.Kinetic Engineering Ltd. as well as VIDEOCON television sets is totally perverse inasmuch as the second applicant is using the adjoining premises for the said purpose. He submitted that there is no subletting made by the first applicant and the second applicant is not placed in exclusive possession of the suit property. He submitted that the second applicant is the agent of the first applicant. He submitted that there is no evidence on record to show that there is any transfer of interest by the first applicant in favour of second respondent.

5. I have considered the submissions made by Mr.Joshi appearing for the applicants. Certain photographs of the suit property were placed on record of the Trial Court and the same were shown to the witness examined by the applicants. The witness examined by the second applicant has not disputed the correctness of the said photographs. The said photographs show that the scooters manufactured by M/s.Kinetic Engineering Ltd. were parked in the suit property. The photographs also show that the name of VIDEOCON is displayed on the suit property. Apart from

the photographs, bills, vouchers etc. regarding sale and servicing of vehicles manufactured by M/s.Kinetic Engineering Ltd. were produced on record which establish the fact that the second applicant was selling the scooters manufactured by M/s.Kinetic Engineering Ltd. in the suit premises. On the basis of said documents the learned Trial Judge disbelieved the case of the applicants that the second applicant has started the new business of selling scooters of M/s.Kinetic Engineering Ltd. and VIDEOCON Television sets in the adjoining premises of one Ranka. The Trial Court, therefore, disbelieved the case made out by the second applicant that the second applicant is the Outlet Manager of M/s.Scooters India Limited i.e. the first applicant. The Appellate Court has referred to the newspaper advertisement and Trading Account placed on record. The Appellate Court has also referred to the Shop Act Licence and has come to the conclusion that the second applicant was in possession of the suit property. In the document of lease there is a stipulation that the first applicant Scooter India Limited shall use the premises for their retail outlet of sale of their own products and for servicing, repairs of the vehicles manufactured by them. The concurrent

finding of both the Courts below is that the second applicant is selling scooters manufactured by M/s.Kinetic Engineering Ltd. as well as VIDEOCON Television sets in the suit property. That is the reason why the Courts below have disbelieved the defence of the applicants and have accepted the case made out by the respondents as regards illegal subletting. It appears from the findings recorded by the Courts below that the second applicant is carrying on his own independent business in the suit premises of which the first applicant was the tenant.

6. It is not possible to interfere with the concurrent finding on the ground of unauthorised subletting. The said finding is based on documentary evidence on record. In a limited revisional jurisdiction, the said finding cannot be disturbed. Thus, the decree passed by the Trial Court and confirmed by the Appellate Court on the ground of subletting deserves to be confirmed. As the decree passed by the Courts below on this ground is required to be confirmed, it is not necessary to refer to other grounds of eviction held against the applicants.

7. At this stage, learned counsel for the

applicants seeks time to vacate. It is submitted that the applicants have been in possession of the suit property for a long period. The said prayer is opposed by the advocate for the respondents.

8. A reasonable time deserves to be granted to the applicants to vacate the suit premises. Hence, I am inclined to grant time till 31st December 2007. Hence, I pass following order.

9. ORDER :-

(a) Civil Revision Application is dismissed. No order as to costs;

(b) Notwithstanding dismissal of the Civil Revision Application, the decree for possession shall not be executed subject to condition of the applicants filing in this Court usual undertaking to vacate the suit premises on or before 31st December 2007. If the undertaking is not filed within a period of four weeks from today, the decree for possession will immediately become executable;

(c) Parties and all concerned to act on an

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ordinary copy of this order duly authenticated by Registry of this Court.

(A.S.OKA, J.)